IN THE HIGH COURT OF DELHI

Crl.M.C.No.4122/2003

# !	Sarla Jain	.....	Petitioner
	VERSUS		
$	Central Bank of India	.....	Respondent

Crl.M.C.No.4123/2003

# !	Sarla Jain	.....	Petitioner
	VERSUS		
$ ^	Central Bank of India	.....	Respondent

Crl.M.C.No.4126/2003

# !	Sarla Jain	.....	Petitioner
	VERSUS		
$ ^	Central Bank of India	.....	Respondent

Crl.M.C.No.4127/2003

# !	Sarla Jain	.....	Petitioner
	VERSUS		
$ ^	Central Bank of India	.....	Respondent

Crl.M.C.No.5161/2003

# !	Asian Global Ltd. & Anr.	.....	Petitioner
	VERSUS		
$ ^	Central Bank of India & Anr.	.....	Respondent

Crl.M.C.No.5162/2003

# !	Asian Global Ltd. & Anr.	.....	Petitioner
	VERSUS		
$ ^	Central Bank of India & Anr.	.....	Respondent

Crl.M.C.No.5166/2003

# !	Asian Global Ltd. & Anr.	.....	Petitioner
	VERSUS		
$ ^	Central Bank of India & Anr.	.....	Respondent

Crl.M.C.No.5167/2003

# !	Asian Global Ltd. & Anr.	.....	Petitioner
	VERSUS		
$ ^	Central Bank of India & Anr.	.....	Respondent

Through: Mr.Pradeep Jain, Adv. for petitioner

Through: Mr.Kanwal Chaudhary with Mrs.Amarjeet and Jagjit Vedi, Mr.A.R. Verma, Advocates for respondent

% DATE OF DECISION: 22.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J. (Oral)**

1. Facts may be noted in brief. Asian Global Ltd. (here-in-after referred to as AGL) had an account with the Central Bank of India. AGL was advanced certain credits by the bank. There were defaults. Payments remained outstanding by AGL to its banker.

2. In the month of March 1996, 4 cheques, each in sum of Rs.5 lacs were issued by Asian Consolidated Industries Ltd. (here-

in-after referred to as ACI) in favour of AGL. Vide letter dated 7.3.1996 AGL forwarded the 4 cheques to its banker informing as under :-

> 'Find enclosed the following cheques to clear the outstanding amount in our account .....'.

3. The cheques when presented for encashment were returned dishonoured by the banker to whom the cheques were drawn, i.e. the banker of ACI.

4. After notifying that the cheques were dishonoured, notice being served upon AGL and ACI, 4 complaints under Section 138 read with Section 142 of the N.I. Act, 1881 was filed.

5. Alok Jain, Sanjay Jain, Rajeev Jain, Rakesh C.Jain and Sarla Jain stated to be Directors of ACI and AGL were impleaded as accused persons, apart from the company ACI and AGL.

6. Summoning orders were passed by the learned Trial Judge. The same have noted that prima facie, accused are liable to be summoned under Section 138 read with Section 141 N.I. Act.

7. An application was filed for recall of the summoning orders. As per law then understood and interpreted, i.e. before decision of the Supreme Court in *Adalat Prasad Vs. Rooplal Jindal & Ors.* (2004) 7 SCC 338 was pronounced, since applications seeking recall of the summoning orders were being considered by the trial courts, the application for recall of the summoning order was considered. The same was dismissed vide order dated 28.7.2003.

8. Since Hon'ble Supreme Court opined in *Adalat Prashad's* case (supra) that the court issuing the summoning order cannot recall the same, thus learned counsel for the parties have addressed arguments on the issue, de hors the order dated 28.7.2003.

9. Petitioners in the above captioned petitions are Sarla Jain, Rajeev Jain and AGL.

10. Sarla Jain questions the summoning order, inter alia, alleging that she was an Alternative Director and that she was neither in charge nor was in control of the affairs of the 2 companies. It is further contended by her that averments in the complaint do not disclose a cause to proceed against her. Rajeev Jain urges that the complaint does not disclose any cognizable offence against him.

11. Averments against Sarla Jain including other stated Directors of the 2 companies are contained in paras 12 and 21 of the complaint. The same reads as under :-

> "12. That the Accused No.3 to 7 are the Directors of the Accused No.1 and 2 and responsible and liable for the acts of Accused no.1 and 2 as envisaged under the law.
>
> X X X X
>
> 21. That as submitted earlier, Accused No.3 to 7 as Directors of Accused No.1 and 2 have committed the offence and hence they are liable to be prosecuted for the offences under Section 138, 139 & 142 of the N.I. Act and under Section 120B and 420 of the Indian Penal Code."

12. Learned counsel for Sarla Jain and Rajeev Jain submits

that averments in the complaint do not disclose any cognizable offences committed by Sarla Jain or Rajeev Jain. It is urged by learned counsel that liability of Directors of a company is a vicarious liability under Section 141 of the N.I. Act, 1881 and foundation of the vicarious liability is that the person made vicariously liable is in charge of and was responsible to the company for the conduct of the business of the company. Further, counsel submits that extended liability under sub-section 2 of Section 141 of the N.I. Act can be fastened only where it is pleaded and proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of the person made so liable.

13. It is further urged that the pleadings in para 12 of the complaint evidences a presumptive plea that Sarla Jain and Rajeev Jain would be liable, as law envisages that they are liable.

14. Per contra, learned counsel for the bank urges that pleadings in para 12 of the complaint are with sufficient clarity and bring home the allegations that Sarla Jain and Rajeev Jain are responsible and are liable for the acts of the 2 accused companies.

15. Whether Sarla Jain was or was not an alternative director is a question of fact which needs evidence for its resolution and hence I am not dealing with said submission.

16. Suffice would it be to state that criminal liability has to be fastened with certainty and not on loose and laconic

pleadings. In a complaint case, the complaint must make it manifestly clear as to what is the gravement of the allegation against a particular accused. Unless law presumes, there cannot be any presumption that a person is guilty of an offence.

17. In case of offence by a company, a presumption would arise that the offence has been committed with the active knowledge, consent or supervision of the Managing Director for the reason by virtue of the designation of his office, namely, 'Managing' law presumes that such person would be liable. But in the case of Directors, position is to the contrary. No legal presumption arises. Vicarious liability has to be pleaded and proved.

18. Sub-Section 1 of Section 141 of the N.I. Act, 1881 reads as under :-

> '**141. Offences by companies.-**(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.'

19. A bare reading of Sub-Section 1 of Section 141 of the N.I. Act makes it clear that to fasten liability on a Director it has to be proved that the person named as the Director was responsible to the company and was incharge of the affairs of the company pertaining to the conduct of the business of the company.

20. The principle of variance between pleading and proof would require that before a fact is proved, it must be pleaded.

Thus, an essential ingredient of an actionable complaint, where liability is fastened on the shoulders of a Director, would be to aver that the person concerned was in charge of and was responsible to the company for the conduct of the business of the company.

21. The reason is that on proof of such facts, law would treat said person to be guilty of the offence committed by the company.

22. In the decision reported as AIR 1983 SC 67 *Municipal Corporation of Delhi Vs. Ram Kishan Rastogi & Anr.*, pertaining to an offence under the Prevention of Food Adulteration Act, 195, following averment in the complaint was made :-

> '5. That the Accused No.3 is the Manager of Accused No.2 and Accused No.4 to 7 are the Directors of Accused No.2 and as such they were incharge of and responsible for the conduct of business of Accused No.2 at the time of sampling.'

23. Considering the aforenoted pleadings, Hon'ble Supreme Court, in para 14 of the report, opined that a meaningful reading of the pleading shows that the complaint had merely presumed that the Directors of the company would be guilty because of holding a particular office since law would assume so.

24. In para 15 it was opined that no such inference is presumed by law and that since Directors are vicariously liable for offences by the company and vicarious liability being an incident of an offence under the Act, there have to be specific averments of fact against the Directors wherefrom a reasonable

inference could be drawn that if proved, they, i.e. the Directors would also be vicariously liable.

25. In the report published as AIR 2007 SC 1454 *N.K.Wahi Vs. Shekhar Singh & Ors.*, dealing with Sections 141 and 138 of the N.I. Act, noting an earlier decision of the Supreme Court reported as (2005) 8 SCC 89 *SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla*, in para 8 of the report, their Lordships of the Supreme Court observed as under :-

> "**8.** To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the Court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable."

26. In para 19, legal position was summarized and in sub-para 'a' of para 19 it was clarified as under :-

> "19(a). It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of the business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied."

27. Perusal of pleadings in para 12 of the complaint clearly envisage that liability on the Directors is sought to be fastened on the allegation that as envisaged under the law, the Directors are responsible and liable for the acts of accused No.1 and 2.

28. The pleadings fall short of sufficient averments required to be made constituting a proper cause pleaded in a complaint under Section 138 read with Section 141 of the N.I. Act.

29. Petitions filed by Sarla Jain are liable to be allowed on this short ground.

30. Pertaining to the petitions filed by Asian Global Ltd. and Rajeev Jain, suffice would it be to state that since there is commonality of pleadings vis-a-vis Rajeev Jain and Sarla Jain, for the reasons noted here-in-above in favour of Sarla Jain, petitions filed on behalf of Rajeev Jain have likewise to be allowed.

31. As regards the plea of AGL, an interesting issue arose for consideration and was debated at the Bar. The issue was whether AGL had negotiated the 4 cheques in favour of Central Bank of India or whether the bank was handed over the cheques for collection. In other words, whether the status of the bank was that of a holder for collection or whether it was as holder in due course.

32. Learned counsel for the bank took a final stand that case of the bank is that the bank was a holder in due course. Thus learned counsel for the parties state that the matter may proceed ahead for decision taking on record the stand of learned counsel for the bank that the bank was a holder in due course of the 4 cheques.

33. Proceeding on the basis that the bank was a holder in due course, question would arise, whether under the

circumstances AGL would be liable for the cheques being returned unpaid due to insufficiency of funds.

34. Admitted fact is that the 4 cheques were issued by ACI Ltd. If the bank, i.e. Central Bank of India became a holder in due course, I fail to understand as to how AGL would be liable in case the cheques were dishonoured by the banker on which ACI Ltd. drew the cheques.

35. Indeed, learned counsel for the Bank, short of making a concession, failed to make any worthwhile submissions whereform it could be gathered that liability would be of AGL in addition to that of ACI Ltd.

36. It would have been debatable if it was the case of the bank that in discharge of its liability, AGL got the cheques issued form ACI and ACI promised to clear the dues of AGL. This argument could have been considered if case of the bank was not of being a holder in due course.

37. Under the circumstances, I hold that the complaint discloses no cause of action against AGL.

38. I clarify. I have proceeded on the basis, as submitted by learned counsel for the bank, that the bank claims to be a holder in due course of the 4 cheques.

39. The net result is that the petitions have to succeed in favour of all the petitioners.

40. Ordered accordingly.

41. The complaints and summoning orders are quashed

but limited to the petitioners, namely, AGL, Rajeev Jain and Sarla Jain.

42. No costs.

22 August, 2007 PRADEEP NANDRAJOG,J.
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